

REMARKS

Reconsideration of this application, as presently amended, is respectfully requested.

Claims 1-20 are pending in the present application. Claims 1-20 stand rejected.

Claim Objection

Claim 15 was objected to because of informalities. More specifically, the Examiner asserts that the language “connected to at an end of the at least one link member” should be amended to delete either the word “to” or the word “at”. Claim 15 has been amended to delete the term “at”. Claim 15 now recites “connected to an end of the at least one link member”.

Reconsideration and withdrawal of the objection to claim 15 are earnestly solicited.

Claim Rejections – 35 U.S.C. §112, second paragraph

Claims 2, 6, 9-13 and 17 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The various bases for the rejections are discussed separately below.

Claim 2

Claim 2 was rejected because there is insufficient antecedent basis for the recitation “the drive power transmitting means”.

To obviate this basis of the rejection, claim 2 has been amended to change “drive power transmitting means” to “link mechanism” such that claim 2 recites the invention in a manner consistent with claim 1 from which claim 2 depends. More specifically, in the previous Amendment, claim 1 was amended to change “drive power transmitting means” to --link mechanism--. However, claim 2 was not previously amended in a manner consistent with claim 1. Therefore, claim 2 has been amended to change “drive power transmitting means” to --link mechanism—such that it is consistent with claim 1.

Claim 2 has also been amended to change “air-tight member” to --air-tight link guide portion-- in a manner consistent with claim 1.

Claim 6

Claim 6 was rejected for the same reasons as claim 1. That is, the Examiner asserts that there is insufficient antecedent basis for the recitation “the drive power transmitting means”. Claim 6 has been amended to change “drive power transmitting means” to --link mechanism-- in a manner consistent with claim 5 from which claim 6 depends.

Claim 6 has also been amended to change “air-tight member” to --air-tight link guide portion-- in a manner consistent with claim 5.

Claims 9, 12 and 13

Claims 9, 12 and 13 were rejected for the same reasons set forth in the previous Office Action, that is, the Examiner asserts that the recitation “the magnitude of a moment required for

starting the bending action of the second articulation portion is larger than a moment required for the bending action of the first articulation portion” is allegedly indefinite because this recitation is a *functional limitation that is not supported by sufficient structure to accomplish the function.*

Initially, it is noted that the Examiner’s rationale supporting the rejection under §112, second paragraph, typically applies to interpreting whether claim language should be treated under §112, sixth paragraph, and not to a rejection under §112, second paragraph. More specifically, the case law regarding the interpretation of means-plus-function language indicates that if the Examiner believes that the claim language *does not recite sufficient structure to perform the recited function*, then the claim element should be interpreted under §112, sixth paragraph, as a means-plus-function element. See, for example, *Mass. Inst. of Tech. v. Abacus Software*, 462 F.3d 1344 (Fed. Cir. 2006), where the Court stated, “The phrase ‘colorant selection mechanism’ is presumptively not subject to 112 ¶ 6 because it does not contain the term ‘means.’ However, a limitation lacking the term ‘means’ may overcome the presumption against means-plus-function treatment if it is shown that ‘the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’’’ [Emphasis added.]

In any event, claims 9, 12 and 13 have been amended to obviate the rejection thereto under §112, second paragraph, by reciting “*wherein the second articulation portion includes a joint portion that is so constructed that the joint portion causes a magnitude of a moment required for starting the bending action of the second articulation portion to be larger than a moment required for the bending action of the first articulation portion.*”

First, it is submitted that claims 9, 12 and 13 recite sufficient structure to accomplish the recited function. That is, claims 9, 12 and 13 now explicitly recite the structure which accomplishes the recited function, that is, the joint portion (e.g., 51a in Fig. 4) of the second articulation portion is the structure to accomplish the function.

Support for these amendments to claims 9, 12 and 13 is provided, for example, in Fig. 5B and the description thereof, which illustrate and describe that the joint portion 51a of the second articulation portion 51 causes a magnitude of a moment required for starting the bending action of the second articulation portion to be larger than a moment required for the bending action of the first articulation portion.

Claim 10

Claim 10 was rejected for the same reasons set forth in the previous Office Action, that is, the Examiner asserts that the recitation “a force generated in a direction along the rotary shaft is increased between the first coupling portion and the second coupling portion accompanied by the bending action of the second articulation portion” is allegedly indefinite because this recitation *is a functional limitation that is not supported by sufficient structure to accomplish the function.*

In the previous response, it was argued that the “first coupling portion” and the “second coupling portion” constitute the structure that supports the recited function. In response, the Examiner asserts “As there is insufficient structure recited in the description of the first and second coupling portions to perform the function of ‘a force generated in a direction along the rotary shaft is increased between the first coupling portion and the second coupling portion

accompanied by the bending action of the second articulation portion”, the rejection of the claim under 112, 2nd paragraph is maintained.” See page 15, lines 5-10 of the Office Action.

First, claim 10 has been amended to clarify that it is the structure of the first coupling portion and the second coupling portion that accomplishes the recited function. That is, claim 10 has been amended to recite “the first coupling portion and the second coupling portion are so constructed that a force generated in a direction along the rotary shaft is increased between the first coupling portion and the second coupling portion accompanied by the bending action of the second articulation portion.”

Furthermore, the Examiner’s assertion that “there is insufficient structure recited in the description of the first and second coupling portions to perform the function of ‘a force generated in a direction along the rotary shaft is increased...’” is respectfully traversed. More specifically, first, claim 10 now explicitly recites that the first coupling portion and the second coupling portion have a structure (i.e., “are so constructed”) to accomplish the recited function. That is, the claim clearly indicates the structure that performs the recited function. Therefore, the claim recites sufficient structure for performing the recited function because applicants have so defined the structure which performs the function. Second, applicants are permitted to claim the invention as broadly as permitted by the prior art. Breadth of a claim is not to be equated with indefiniteness (see MPEP §2173.04).

Claim 17

Claim 17 was rejected because it is allegedly unclear whether the “projecting portion” (i.e., “the first joint portion has a *projecting portion*”) is the same as the “projection” recited in claim 15. Claim 17 has been amended such that the language describing the “projection” is consistent with claim 15.

In view of the foregoing, it is respectfully submitted that the claims particularly point out and distinctly claim the subject matter which applicants regard as the invention in accordance with the requirements of §112, second paragraph. Reconsideration and withdrawal of the rejection under §112, second paragraph, are respectfully requested.

Rejections in view of the Prior Art

Claims 9 and 12-14 were rejected under 35 U.S.C. §102(b) as being anticipated by **Yamashita et al.** (“MultiSlider Linkage Mechanism for Endoscopic Forceps”, Oct. 2003, previously cited).

Claim 19 was rejected under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over **Yamashita et al.**

Claims 1-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Yamashita et al.** in view of **Burbank et al.** (USP 5,425,737, newly cited).

Claims 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Yamashita et al.** in view of **Kuehn et al.** (USP 6,743,239, previously cited).

Claims 15-17 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Yamashita et al.** in view of **Barry** (USP 5,928,136, previously cited).

Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over **Yamashita et al.** in view of **Barry**.

Claim 19 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Yamashita et al.** in view of **Barry**.

The rejections of each of the independent claims, and claims dependent therefrom, will be discussed separately below.

Independent claims 1 and 5

For the reasons set forth in detail below, the rejections of independent claims 1 and 5 are respectfully traversed.

In the previous response, it was argued that **Yamashita** does not disclose “*an air-tight link guide portion provided in the hollow portion of the cylindrical frame that holds and guides the link mechanism as the link mechanism moves to transmit the drive power to the movable means*” as recited in each of claims 1 and 5. The Examiner now acknowledges that **Yamashita** does not disclose the claimed “air-tight link guide portion” (see the sentence bridging pages 6 and 7 of the Office Action) and applies the newly cited **Burbank et al.** reference to teach this feature.

The **Burbank et al.** reference is directed to a surgical instrument that is inserted into the body, and having a pair of jaws and a suturing instrument. The Examiner relies on the teaching

in column 6, lines 31-46 of **Burbank**, which discloses a sleeve 88 that “acts as an air seal to prevent air from entering or exiting the body” (see col. 6, lines 35-36). More particularly, the surgical instrument includes an elongated shaft 68, which includes elongated slots 70, 72 and 85 for slidably housing a camming rod 34, a driving rod 54 and needle cartridge 22, respectively, and the sleeve 88 fits over a reduced section 90 of the shaft 68 to contain the proximal ends of the camming rod 34, driving rod 54 and needle cartridge 22 (see Fig. 3 and col. 6, lines 31-35).

The airtight seal is maintained by providing the driving rod 54 and camming rod 34 with raised areas (e.g., 92) that contact an inner surface of the sleeve. Further, the needle cartridge 22 includes a flap and a spring that press against the inner surface of the sleeve to maintain the airtight seal 88. See col. 6, lines 36-46.

However, unlike the invention recited in claims 1 and 5, the sleeve 88 that acts as an air seal is not “*an air-tight link guide portion provided in the hollow portion of the cylindrical frame [that accommodates the link mechanism]*”. More specifically, the sleeve 88 is not provided in a hollow portion that accommodates a link guide mechanism. Instead, the sleeve 88 is the hollow portion that accommodates a link guide mechanism. That is, the sleeve 88 accommodates the elongated shaft 68 having elongated slots 70, 72 and 85 that slidably house the camming rod 34, driving rod 54 and needle cartridge 22. The elongated shaft 68 would be considered a link guide mechanism that is accommodated in the hollow sleeve 88.

Therefore, **Burbank** does not alleviate the deficiencies of **Yamashita**. That is, **Burbank** does not disclose “*an air-tight link guide portion provided in the hollow portion of the cylindrical frame that holds and guides the link mechanism as the link mechanism moves to*

transmit the drive power to the movable means" as recited in each of claims 1 and 5. Accordingly, the combination of **Yamashita** and **Burbank** does not disclose or suggest all elements of the invention recited in claims 1 and 5, and claims dependent therefrom.

Independent claims 9, 12 and 13

Each of claims 9, 12 and 13, as amended, recite "wherein the second articulation portion includes *a joint portion that is so constructed that the joint portion causes* a magnitude of a moment required for starting the bending action of the second articulation portion to be larger than a moment required for the bending action of the first articulation portion." [Emphasis added.]

In the previous response, it was argued that **Yamashita** does not disclose or suggest the claimed "*the first articulation portion and the second articulation portion are so constructed that...a magnitude of a moment required for starting the bending action of the second articulation portion is larger than a moment required for the bending action of the first articulation portion.*"

The Examiner responds to the above argument in Item 15, pages 15 and 16 of the Office Action, as follows:

...as stated in the rejection the moment to start bending at the second portion is greater than that of the first portion, *since the forces required for bending at the second articulation portion moves both the first and second articulation portion which would require more force than moving just one of the articulation portions.* More mass is required to move (i.e., the masses of the first and second articulation portions) when the second articulation portion is moved, so the moment of inertia

increases and more force is required to move the second articulation portion. [Emphasis added.]

Thus, the Examiner's position is that the first and second articulation portions together have more mass than the first articulation portion alone, and because the first and second articulation portions have more mass, bending at the second articulation portion requires a greater moment to move this greater mass.

However, unlike the presently claimed invention, **Yamashita** does not disclose or suggest a manipulator wherein the joint portion has a structure that causes a magnitude of a moment required for starting the bending action of the to be larger than a moment required for the bending action of the first articulation portion. More specifically, according to the Examiner's interpretation of the **Yamashita** reference, it is the mass of the articulation sections (first and second), and not the joint portion, that causes the moment required for starting the bending action of the second articulation portion to be larger than a moment required for the bending action of the first articulation portion.

Accordingly, it is respectfully submitted that **Yamashita** does not disclose or suggest the claimed "wherein the second articulation portion includes a joint portion that is so constructed that the joint portion causes a magnitude of a moment required for starting the bending action of the second articulation portion to be larger than a moment required for the bending action of the first articulation portion" as recited in claims 9, 12 and 13.

Independent Claim 15

For the reasons set forth below, the rejection of claim 15 is respectfully traversed.

In the previous Office Action, the Examiner rejected claim 15 over only **Yamashita**.

Now the Examiner rejects claim 15 over **Yamashita** in view of previously cited **Barry**.

In the previous response, it was argued that **Yamashita** does not disclose “*a first joint portion connected to an end of the at least one link member, wherein the first joint portion includes a projection that is releasably connected to a drive power generating means for generating the drive power*” as recited in claim 15. The Examiner apparently agreed with this argument, as the Examiner now relies on **Barry** to teach the above-noted feature. In particular, as indicated in the sentence bridging pages 9 and 10 of the final Office Action, the Examiner relies on joined together segments 11 of a flexible endoscope, and, more particularly, the Examiner relies on the teaching of a connecting portion between segments 11 that includes a hinge pin 25 (which the Examiner considers a “projection”) that fits into a hinge aperture 24 (see Fig. 3 of **Barry**).

However, **Barry** does not disclose that the hinge pin 25 (projection) is releasably connected to a drive power generating means. In fact, **Barry** teaches that the pins 25 are attached by adhesive or welding (see col. 3, lines 32-35), and are thus not releasably connected. Moreover, **Barry** teaches that the segments 11 (which the Examiner considers to correspond to the claimed “joint portion”) are connected to each other, and does not teach that the segments are “*connected to an end of the at least one link member*” and include a projection “*connected to a drive power generating means*”.

Therefore, it is respectfully submitted that **Barry** does not disclose or suggest “*a first joint portion connected to an end of the at least one link member, wherein the first joint portion includes a projection that is releasably connected to a drive power generating means for generating the drive power*” as recited in claim 15.

Independent claim 18

For the reasons set forth below, the rejection of claim 18 is respectfully traversed.

The Examiner rejects claim 18 over the same combination of references as in the previous Office Action, that is, the Examiner rejects claim 18 over **Yamashita** in view of **Barry**.

In the previous response, it was first argued that neither **Yamashita** nor **Barry** disclose or suggest “*a second joint portion connected to the drive power generating means, the second joint portion including an elastic body having a fitting hole, and the elastic body can be elastically urged in a direction substantially perpendicular to a transmitting direction of the drive power*”.

In response to the above arguments, on page 17, Item 26 of the Office Action, the Examiner responds as follows:

In response to applicant’s argument that the elastic body taught by **Barry** is not urged in a direction substantially perpendicularly to the transmitting direction of the drive power and the projecting portion and the fitting hole being removable, a recitation of *the intended use of the claimed invention* must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As **Barry** shows the elastic body extending parallel to a longitudinal axis of the device, the elastic body is capable of being urged perpendicularly to the

transmitting direction of the drive power (which is parallel to the longitudinal axis of the modified device of **Yamashita** in view of **Barry**).

As will be discussed below, the Examiner has improperly applied the law regarding “statements of intended use”.

More specifically, first, contrary to the Examiner’s assertion, the recitation regarding the elastic body being urged in a direction substantially perpendicular to a transmitting direction of drive power is clearly *not* a statement of intended use. Therefore, the Examiner’s statement that “[if] the prior art structure is capable of performing the intended use, then it meets the claim” is not applicable.

As discussed in the Manual of Patent Examining Procedure (MPEP) §2111.02 II, a “statement of intended use” is a statement, normally found in the preamble, reciting the purpose or intended use of the claimed invention. More specifically, the MPEP §2111.02 II states the following regarding statements of intended use:

During examination, *statements in the preamble reciting the purpose or intended use of the claimed invention* must be evaluated to determine whether the recited purpose or intended use results in a structural difference (or, in the case of process claims, a manipulative difference) between the claimed invention and the prior art. If so, the recitation serves to limit the claim. See, e.g., *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963). [Emphasis added.]

Thus, a “statement of intended use” is a statement of the purpose or intended use of the *entire claimed invention*. The language that the Examiner asserts is a statement of intended use

clearly is not. Therefore, the Examiner's rationale supporting the rejection (i.e., that if the prior art structure is capable of performing the intended use, then it meets the claim) is not applicable.

Moreover, even assuming, *arguendo*, that the language noted by the Examiner were a statement of intended use, the Examiner's statement “[i]f the prior art structure is capable of performing the intended use, then it meets the claim” is only true when the prior art structure is the same as the claimed invention (i.e., the prior art structure discloses every element of the claimed invention) and the only alleged difference is the intended use of the claimed invention. In other words, the application of the “intended use” doctrine presupposes that the prior art teaches every element of the claimed invention and that applicant is attempting to distinguish over the prior art based on a use of the invention. This is clearly not the case with present claim 18.

Second, regarding claim 18, in the previous response, it was argued that neither **Yamashita** nor **Barry** disclose or suggest “*wherein the second joint portion is connected to the drive power generating means in such a manner that the second joint portion is initially advanced substantially linearly by the drive power of the drive power generating means without the projecting portion being fitted into the fitting hole, and the projecting portion is arranged such that the second joint portion is connected to the first joint portion by advancing the second joint portion substantially linearly until the projecting portion is fitted into the fitting hole while an urging force is applied to the first joint portion by the elastic body*”.

In response to this second argument, in the paragraph bridging pages 11 and 12 of the Office Action, the Examiner asserts:

As there is not explicit structure preventing such a relationship between the first and second joint portions in the modified device of Yamashita et al. in view of Barry, the second joint portion *is capable* that the second joint portion may be initially advanced substantially linearly by the drive power of the drive power generating means without the projecting portion being fitted into the fitting hole, and the projecting portion being arranged such that the second joint portion *is capable of* connecting to the first joint portion by advancing the second joint portion substantially linearly until the projection portion is fitted into the fitting hole while an urging force is applied to the first joint portion by the elastic body. [Emphasis added.]

As will be discussed below, it is respectfully submitted that the Examiner's reasons set forth above supporting the rejection of claim 18 are improper for several reasons.

First, contrary to the Examiner's assertion, there is explicit structure preventing the claimed relationship between the first and second joint portions in the modified device of **Yamashita et al.** in view of **Barry**. Specifically, as discussed above, **Barry** discloses that the segments 11 (which the Examiner considers constitute the first joint portion and the second joint portion, having a projecting portion 25 and a fitting hole 24) are *permanently* attached to each other by such means as welding or adhesive. Therefore, the combination of **Yamashita** and **Barry** does not disclose, and would not result in, the invention recited in claim 18, where *the second joint portion is initially advanced substantially linearly by the drive power of the drive power generating means without the projecting portion being fitted into the fitting hole*.

Second, the claim language "*wherein the second joint portion is connected to the drive power generating means in such a manner...*" defines the manner in which the second joint portion is connected to the drive power generating means and the manner in which the projecting portion fits into the fitting hole in a manner which defines structural relationships between the

claimed elements. Neither **Yamashita** nor **Barry** disclose or suggest these claimed relationships.

Therefore, for the reasons set forth above, it is respectfully submitted that the combination of **Yamashita** and **Barry** does not disclose or suggest the claimed “*a second joint portion connected to the drive power generating means, the second joint portion including an elastic body having a fitting hole, and the elastic body can be elastically urged in a direction substantially perpendicular to a transmitting direction of the drive power*” and “*wherein the second joint portion is connected to the drive power generating means in such a manner that the second joint portion is initially advanced substantially linearly by the drive power of the drive power generating means without the projecting portion being fitted into the fitting hole, and the projecting portion is arranged such that the second joint portion is connected to the first joint portion by advancing the second joint portion substantially linearly until the projecting portion is fitted into the fitting hole while an urging force is applied to the first joint portion by the elastic body*”.

Independent claim 19

Claim 19 has been amended to further define the invention in terms of the arrangement of the first joint portion and the second joint portion. That is, claim 19 has been amended to define that the first joint portion and the second joint portion are arranged such that they are not coupled when the bending action member and the actuator are initially joined together. Support for the

amendment to claim 19 is provided, e.g., on page 26, lines 13-17 of the specification as originally filed.

Claim 19 now recites "*the first joint portion and the second joint portion are arranged such that the first joint portion and the second joint portion are not coupled to each other when the bending action member and the actuator are initially joined together, and such that the second joint portion is movable along a transmitting direction of the drive power by the drive power generating means to become coupled to the first joint portion*".

In the previous response, it was argued that neither Yamashita nor Barry disclose "a first joint portion provided on the drive power transmitting means and a second joint portion provided on the drive power generating means are provided to be connectable and separable" and "a coupling between the first joint portion and the second joint portion is executed after the bending action member and the actuator are jointed together" as recited in claim 19.

In response to the previously presented arguments regarding claim 19, in Item 25, pages 16 and 17 of the Office Action, the Examiner asserts:

Applicant has noted, the Yamashita et al. reference discloses the unsterilizable portion of the device (containing the actuator with the drive power generating means) as removable from the sterilizable portion of the device (containing the bending action member and drive power transmitting means). Although *silent about the details* of the coupling structure, *there must be* an interface on the drive transmitting means (in sterilizable portion) and on the drive power generating means (in the unsterilizable portion) in order to allow for coupling of the two portions for use of the device. Therefore, as Applicant *has not provided any specific structure for the first joint portion or second joint portion*, the interfaces on the drive transmitting means and the drive power generating means meet the limitations of the claims. [Emphasis added.]

Thus, the examiner's position is that **Yamashita** must inherently have an interface connects the part of the manipulator as claimed. In particular, Fig. 5 of **Yamashita** shows a manipulator having a sterilizable part (grip, forceps) that is separable from an unsterilizable part (DC-servomotor, potentiometer). It is apparently the Examiner's position that there inherently must be some interface that couples the drive power generating means (in the unsterilizable part) and the drive power transmitting means (in the sterilizable part).

However, claim 19 has been amended to define the invention in terms of the arrangement of the first joint portion and the second joint portion. That is, claim 19 has been amended to define that the first joint portion and the second joint portion are arranged such that they are not coupled when the bending action member and the actuator are initially joined together (see page 26, lines 13-17 of the specification as originally filed).

It is respectfully submitted that **Yamashita** does not disclose or suggest first and second joint portions having the particular structural arrangement presently claimed *such that the first joint portion and the second joint portion are not coupled to each other when the bending action member and the actuator are initially joined together, and such that the second joint portion is movable along a transmitting direction of the drive power by the drive power generating means to become coupled to the first joint portion*".

It is well settled that anticipation under §102 is established only if all the elements of an invention, as stated in the claim, are identically set forth in a single prior art reference. Moreover, it is not sufficient that each element be found somewhere in the reference, the

elements must be arranged as in the claim. *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.*, 703 F.2d 1452, 1458 (Fed. Cir. 1984). In view of the foregoing, it is submitted that the cited prior art does not disclose or suggest all elements recited in claims 9, 12-14 and 19. Accordingly, reconsideration and withdrawal of the rejection of claims 9, 12-14 and 19 under §102 are respectfully requested.

A rejection under §103 requires that the combination of teachings applied against the claims must disclose, or at least suggest, all claimed elements. In view of the foregoing, it is respectfully submitted that the various combinations of **Yamashita et al.** with **Kuehn et al.**, **Burbank et al.** and **Barry** do not disclose or suggest all elements recited in the relevant claims. Accordingly, reconsideration and withdrawal of the rejections of claims 1-8, 10-11 and 15-20 under §103 are respectfully requested.

CONCLUSION

In view of the foregoing, it is submitted that all pending claims are in condition for allowance. A prompt and favorable reconsideration of the rejection and an indication of allowability of all pending claims are earnestly solicited.

If the Examiner believes that there are issues remaining to be resolved in this application, the Examiner is invited to contact the undersigned attorney at the telephone number indicated below to arrange for an interview to expedite and complete prosecution of this case.

Application No.: 10/582,354
Art Unit: 3734

Submission of Amendment under 37 C.F.R. §1.114
Attorney Docket No.: 062643

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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